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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1148th MEETING

Held at Headquarters, New York,
on Friday, 10 April 1992, at 10 a.m.

Chairman: Mr. POCAR

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Closure of the session

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Comments on the Human Rights Committee on the second periodic report of Belgium

1. Mr. ANDO introduced the draft comments and said that he had attempted to incorporate in the text the various suggestions made by Committee members.

2. The CHAIRMAN invited the Committee to consider the text paragraph by paragraph.

Paragraphs 1 to 3

3. Paragraphs 1 to 3 were adopted.

Paragraph 4

4. The CHAIRMAN said that, in his view, the words "in a significant number of cases" were rather misleading.

5. Mr. ANDO suggested that they should be replaced by the words "to a certain extent".

6. Paragraph 4, as amended, was adopted.

Paragraph 5

7. Mr. ANDO suggested that, in order to reflect the concerns expressed by one member of the Committee, the words "the narrow scope of the interpretation given to article 6 of the Covenant" should be inserted after the words "other areas of concern include".

8. Miss CHANET expressed doubts concerning the reference to the transplant of organs and tissues of aborted foetuses, which had been included to reflect a concern expressed by Mr. Wennergren. She felt that it might be interpreted as a new position by the Committee on the question of foetuses or abortion, when the Committee had no intention of adopting such a position. The phrase should therefore be deleted or clarified.

9. Mr. ANDO and the CHAIRMAN agreed that the phrase should be deleted.

10. Mr. WENNERGREN said that he had only intended to ask for information and that the information provided by the Belgian delegation had raised no cause for concern. He therefore agreed that the phrase should be deleted.

11. The CHAIRMAN expressed doubts concerning the first sentence of the paragraph, noting that concern about the status of the Covenant in Belgian domestic law had been expressed only by certain members of the Committee. He himself did not share that concern.

12. Mr. MÜLLERSON said that he agreed with the Chairman's point of view. The Committee's concern was the effective implementation of the Covenant and not its place in domestic law. It was immaterial whether a country incorporated the Covenant into its national law, provided that its provisions were properly implemented. The sentence in question should therefore be deleted.

13. Mr. ANDO agreed that the sentence should be deleted.

14. Mr. HERNDL said the point at issue there was not the place of the Covenant in Belgian domestic law but rather that certain provisions of the Covenant were self-executing, while others were not. However, that was a matter for the implementing organ and not for the Committee. The sentence should therefore be deleted.

15. The CHAIRMAN suggested that the first part of the sentence could be retained and combined with the second sentence, since the question of the rights of aliens was the main area in which direct applicability was in doubt. The beginning of the paragraph would then read: "Although noting the direct applicability of several provisions of the Covenant which form part of Belgian domestic law, the Committee is concerned about the difference between civil rights enjoyed by citizens and those enjoyed by aliens ...".

16. Mr. EL-SHAFEI pointed out that members had been concerned that provisions of the Covenant were not self-executing and the comments should reflect that view. The representative of Belgium had said very clearly that it was necessary to go through the courts in order to invoke certain provisions of the Covenant, and that fact did cast doubt on the status of the Covenant in Belgian law.

17. Mr. MÜLLERSON agreed with the Chairman's proposal. The question of whether a State implemented the provisions of the Covenant directly or indirectly was a matter for the State itself. The Committee could offer guidance on how implementation might be improved, but the Covenant itself did not prescribe any particular method of implementation.

18. Miss CHANET said that she, too, supported the Chairman's proposal. A distinction should be drawn between the direct applicability of the provisions of the Covenant and the status of the Covenant in domestic law, which were two very different questions. The Covenant could be an integral part of domestic law but still require implementing provisions in certain specific cases.

19. Mr. ANDO said that he understood the concerns expressed by members. He felt that the most important question was the distinction between civil and political rights, which seemed to correspond to the difference between

(Mr. Ando)

self-executing and non-self-executing provisions. That was a different matter from the question of the civil rights enjoyed by Belgian citizens as opposed to aliens. If the first two sentences were to be combined, he felt that the second part of the sentence should read: "the Committee is concerned about the difficulty experienced by Belgium in distinguishing 'civil' from 'political' rights".

20. Mr. DIMITRIJEVIĆ thought that the problem derived from the word "concerned", since the Committee was not really concerned about the status of the Covenant in Belgian law. He suggested that the wording be amended to read: "the Committee finds it difficult to determine the exact status of the Covenant in Belgian domestic law", deleting the word "also" in the following sentence.

21. Mr. MÜLLERSON said that he preferred the Chairman's suggestion. The fact that the Committee found the status of the Covenant difficult to determine was not something which needed to be included in the final comments. The central issue was the implementation of the Covenant. In many countries it had no place at all in the domestic legal system but was nevertheless effectively implemented.

22. Miss CHANET said that some reference should be made to the fact that the provisions of the Covenant were not fully applicable in certain cases because of the complexity of the legal procedure, since that question had been central to the Committee's discussions. She therefore supported the Chairman's proposal.

23. The CHAIRMAN pointed out that those concerns were covered by paragraph 4, which referred to the "complexity of the Belgian legal framework".

24. Mr. ANDO said that he was prepared to accept the Chairman's proposal.

25. The CHAIRMAN suggested that the words from "about the exact status ..." to "... also concerned" should be deleted, that the words "the narrow scope of the interpretation given to article 6 of the Covenant" should be inserted after the words "other areas of concern include", and that the phrase "the transplant of organs and tissues of aborted foetuses in the light of the Transplant Act 1986" should be deleted.

26. It was so decided.

27. Paragraph 5, as amended, was adopted.

Paragraph 6

28. Mr. SADI said that it was inappropriate to recommend that a State party should "consider giving more weight" to provisions of the Covenant. He therefore proposed that the text should be amended to read: "The Committee recommends to the State party to reflect more adequately in internal administrative practice the provisions of the Covenant ...".

29. Mr. MÜLLERSON endorsed Mr. Sadi's proposal. He also had doubts concerning the penultimate sentence, which recommended that the State party should review the effectiveness of the protection granted to minority rights. He did not recall any expression of concern on the part of the Committee concerning minority rights. Indeed, several members had suggested that Belgian practice in that field should serve as a model for other countries. He therefore proposed that the sentence should be deleted or amended by replacing the word "review" by the words "continue to improve".

30. Miss CHANET said that the reference to article 14 of the Covenant should be deleted since its provisions were covered by the seventh Protocol to the European Convention on Human Rights, to which Belgium was a party. Reference should be made to article 25 instead.

31. The CHAIRMAN endorsed Miss Chanet's proposal.

32. Mr. ANDO said that with regard to the proposal by Mr. Müllerson, Belgium was divided into three different linguistic communities and each of those communities included linguistic minorities. The sentence in question was intended to refer to the practical problems of protecting the rights of those minorities and not to imply discrimination. He agreed that the reference to article 14 should be deleted and replaced by a reference to article 25.

33. The CHAIRMAN suggested that the words "to consider giving more weight" should be replaced by the words "to reflect more adequately", that the reference to article 14 should be replaced by a reference to article 25, and that the words "review the effectiveness of" should be replaced by the words "continue to improve the effectiveness of".

34. It was so decided.

35. Paragraph 6, as amended, was adopted.

36. The draft comments as a whole, as amended, were adopted.

Comments of the Human Rights Committee on the third periodic report of Yugoslavia

37. The CHAIRMAN invited the Committee to consider the text paragraph by paragraph.

Paragraph 1

38. Mr. WENNERGREN said that the Committee should take note of Yugoslavia's efforts to draft a new, more democratic constitution that would improve the observance of human rights. The Committee should also take note of the fact that Yugoslavia had established a special committee to investigate cases of genocide and violations of humanitarian law during the armed conflicts.

39. Miss CHANET said that the new Yugoslav constitution was being drawn up only for Serbia and Montenegro, and that other republics that might wish to adopt it could do so at a later time. In the light of the complex situation and the secession of a number of republics, she wondered whether the drafting of a new constitution was not a trap for the newly independent republics. She therefore could not accept the view that the drafting of a new constitution was a positive factor.

40. She suggested that the Committee should take note that a federal committee had been established to investigate human rights violations during the armed conflicts.

41. Mr. WENNERGREN said that the Committee should add a new paragraph 2 which would read:

> "2. The Committee notes as a positive factor that a federal committee of investigation has been established in order to conduct investigations concerning genocide and violations of humanitarian law during the armed conflicts."

Perhaps the paragraph could be reworded at a later time to include the exact name of the federal committee.

42. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to insert a new paragraph 2 in the comments, as proposed by Mr. Wennergren. The subsequent paragraphs would be renumbered accordingly.

43. Paragraph 1 was adopted.

44. Paragraph 2 was adopted.

Paragraph 3

45. Mr. SADI said that he did not understand why the Committee should refer only to problems in Kosovo when the whole country was in turmoil. He did not think that it was appropriate in the last sentence of paragraph 3 for the Committee to express an opinion about the peace-keeping operations and the cease-fire.

46. Miss CHANET said that she shared Mr. Sadi's view, and suggested that, in the first sentence of paragraph 3, the reference to Kosovo should be deleted. The reference in the last sentence to the United Nations peace-keeping operations and the cease-fire did not affect on the Covenant, and it would be strange for the Committee to ignore the ongoing peace-keeping efforts.

47. Mr. EL-SHAFEI said that, in the first sentence of the paragraph, it seemed as if the difficulties in the province of Kosovo were related to the Committee's consideration of the second periodic report of Yugoslavia.

48. The CHAIRMAN suggested that reference to the period following the consideration of the second periodic report of the State party should be deleted.

49. Mr. ANDO supported Mr. Sadi's proposal to delete the last sentence of the paragraph.

50. The CHAIRMAN suggested that, in the last sentence of the paragraph, the Committee should simply note that a peace-keeping operation had been set up.

51. Paragraph 3, as amended, was adopted.

Paragraph 4

52. Mr. WENNERGREN proposed that, after the first sentence, a new sentence should be inserted, which would read:

> "The Committee wants to emphasize the urgency of the continuing implementaton of the Covenant in those republics."

53. Mr. SADI said that, in paragraph 4, the Committee was suggesting that the right to secede had not been made available by the federal Government, and he wondered whether that was an established fact. During the discussion of the report, the Yugoslav delegation had indicated that it had no quarrel with the republics' exercise of their right to self-determination, as long as they followed the procedure established by the Yugoslav Constitution. That suggested that the legal means for secession were available.

54. Miss CHANET said that, during the discussion of the report, Mr. Herndl had inquired about the right to secession. He had based his question on information contained in the third periodic report, in which that right was more clearly defined than in the Yugoslav Constitution itself. Mr. Herndl had asked whether everything that had happened could have been avoided, since the Yugoslav Constitution contained provisions for a peaceful settlement when republics wished to secede from the federation. The discussion had been purely hypothetical and had had no bearing on the actual situation. That was what she had wished to reflect in the comments.

55. Paragraph 4, as amended, was adopted.

Paragraph 5

56. Mr. SADI said that the Committee should clearly indicate that the atrocities mentioned in paragraph 5 had been committed on both sides. Moreover, when the Committee regretted that there had been too few investigations of such violations, it should specify that it was referring to areas under the control of the federal authorities.

57. Miss CHANET said, in response to Mr. Sadi's observation, that paragraph 5 referred, inter alia, to abuses committed by members of the federal army and that a State was liable for the acts of its army, irrespective of where those acts were committed. For that reason, she felt that the wording of the paragraph was appropriate.

58. For the purposes of clarity, she suggested the insertion of the words "it regrets," in paragraph 5, between "and" and "in consequence".

59. Mr. WENNERGREN suggested that the word "guaranteed" in paragraph 5 should be replaced by "protected" the first time it was used, and the second time, by the phrase "which should prevail" and he suggested strengthening the wording by replacing the word "mentioned" with "highlighted". As a result, the second sentence would read in English: "It is concerned at the numerous violations of human rights protected by the Covenant, in particular those highlighted in article 4, paragraph 2, of the Covenant, which should prevail under any circumstances (right to life and prohibition of torture in particular)".

60. The CHAIRMAN proposed that the paragraph should be amended, as suggested by Mr. Wennergren, and that the phrase "it regrets", suggested by Miss Chanet, should be inserted in the last sentence.

61. Paragraph 5, as amended, was adopted.

Paragraph 6

62. Mr. WENNERGREN suggested that the words "old people and" should be inserted in the text between "in particular" and "children".

63. Mr. PRADO VALLEJO said that in times of civil war it was difficult to ensure freedom of movement and natural that there should be restrictions, de jure and de facto, to prevent loss of life. He therefore considered it pointless for the Committee to deplore the lack of freedom of movement in an area torn by civil war.

64. Miss CHANET said, in response to Mr. Wennergren's suggestion, that women should also be added to the list.

65. With regard to Mr. Prado Vallejo's comment, she pointed out that the same qualification could be made about the rights to privacy and freedom of association: it was difficult to guarantee those rights in a time of civil war. It was not the restrictions themselves, but their scope that the Committee deplored, however, considering it to be excessive even in the circumstances.

66. The CHAIRMAN proposed that the text of the paragraph should be amended to include women and old people.

67. Paragraph 6, as amended, was adopted.

Paragraph 7

68. Miss CHANET suggested that the text should be revised in such a way as to cover populations which had become de facto minorities following inter-ethnic conflicts, in particular, the Serbian and Croat minorities in certain republics.

69. The CHAIRMAN proposed that the phrase "and populations which have now become de facto minorities following recent inter-ethnic conflicts" be added to the end of the paragraph.

70. Paragraph 7, as amended, was adopted.

Paragraph 8

71. Paragraph 8 was adopted.

72. Miss CHANET, supported by Mr. ANDO, repeated earlier suggestions by Mr. El-Shafei and Mr. Wennergren that the Committee should endeavour to convey its concern that all the populations under the protection of the Covenant should continue to enjoy the fundamental rights and freedoms which it guaranteed. As the State party to which the recommendation was addressed no longer exercised control over certain areas it would be necessary to find a neutral wording for that concern.

73. The CHAIRMAN suggested the addition of a new paragraph, mentioning the newly independent territories and expressing the Committee's concern, addressed not to the State party in particular, but to the international community as a whole, that the provisions of the Covenant should continue to be implemented in those republics.

74. Mr. NDIAYE said that the Committee was obliged to adhere strictly to its mandate and that, as the recommendation was addressed to Yugoslavia and Yugoslavia was not in control of those republics, there could be no justification for the inclusion of such a paragraph.

75. The CHAIRMAN conceded that the concern which the Committee wished to express could not legitimately be included in the recommendation to Yugoslavia.

76. The draft comments as a whole, as amended, were adopted.

Submission of reports by States parties under article 40 of the Covenant (continued)

77. The CHAIRMAN drew attention to a document which was before the members of the Committee, concerning the submission of reports by States parties under article 40 of the Covenant. The Bureau suggested that, at its next session, the Committee should consider the third periodic reports of the Republic of Belarus and Mongolia, the second periodic report of Afghanistan and the

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initial reports of the Republic of Korea and Burundi, and should conclude its consideration of the second periodic report of Peru, as decided earlier. The second periodic reports of Venezuela and the United Republic of Tanzania would be kept in reserve in case any of the above-mentioned countries requested postponements.

78. It was so decided.

79. Ms. KLEIN (Secretary of the Committee) said that since December 1991, the Secretariat had received the third periodic reports of Japan and Norway and the second periodic reports of Venezuela and Egypt.

80. The CHAIRMAN said that, in considering the status of reports, the Bureau had also recommended that the Committee should make a special effort to consider the reports of countries in situations of emergency. The Bureau had reviewed the list of overdue reports and had found that the situation in two countries - Somalia and Kenya - deserved consideration; it had therefore suggested that the Committee should request one of those countries to submit its report at the earliest possible date.

81. Mr. PRADO VALLEJO said that, while he welcomed the initiative undertaken by the Bureau, he had difficulty understanding how the Committee could consider an additional report, as it had already scheduled six reports for its July session.

82. The CHAIRMAN said that if the Committee decided to adopt the Bureau's suggestion, it should postpone one of the reports currently scheduled.

83. Mr. AGUILAR drew attention to a draft decision which was before the members of the Committee, requesting the Government of Peru to submit not only answers to the questions raised during the consideration of its second periodic report on 31 March and 1 April 1992, but also information relating to events subsequent to the consideration of the report, in other words, to the suspension of the constitutional order in Peru.

84. Mr. PRADO VALLEJO, Mr. SERRANO CALDERA and Mr. SADI said that they supported the draft decision proposed by Mr. Aguilar.

85. Mr. EL-SHAFEI asked whether the Committee would need to devote more than one meeting to the additional information from Peru; if so, that would conflict with decisions already taken.

86. Mr. AGUILAR said that the current situation in Peru was extremely grave; there were, in fact, two sources of governmental authority, namely, the President of the Republic, and the man who had been the second Vice-President, to whom the members of both houses of Congress had sworn allegiance at a secret meeting. Furthermore, article 82 of the Constitution provided for the right to take up arms in order to overthrow a Government which had usurped

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power. That provision would permit a derogation from article 6 of the Covenant. If the Committee did not request additional information on such a situation, its prestige would suffer.

87. Mr. SADI said there was a possibility that the Government of Peru might not send a delegation to the July session.

88. The CHAIRMAN said that even in the absence of the delegation, the Committee should discuss the situation in the country and should issue its concluding observations. As a minimum of two meetings would be needed for that discussion, he suggested that the second periodic report of Afghanistan should be placed in reserve and should be treated as the first reserve report. If he heard no objection, he would take it that the Committee decided to adopt that suggestion.

89. It was so decided.

90. Mr. PRADO VALLEJO, referring to the draft decision proposed by Mr. Aguilar, suggested that in paragraph 1, article 25 should be added to the articles of the Covenant which the Government of Peru was requested to take into account in submitting additional informaltion.

91. Mr. SADI said that he supported Mr. Prado Vallejo's proposal.

92. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee decided to adopt the draft decision proposed by Mr. Aguilar, as orally amended by Mr. Prado Vallejo.

93. It was so decided.

94. The CHAIRMAN said that at its November 1991 session, the Committee had decided to request the Chairman to send a letter to the Government of Germany, asking it to consider the possibility of submitting a special report on the new Länder, as the Committee had been unable to consider the situation in eastern Germany for some time. In January 1992, the Government had replied that, having consulted the competent authorities, it preferred to submit its fourth periodic report as scheduled in August 1993. The report would reflect developments in the five new Länder. If he heard no objection, he would take it that the Committee authorized him to reply to the Government, acknowledging the receipt of its letter, and emphasizing the Committee's understanding that the Government would submit its fourth periodic report on time.

95. It was so decided.

96. The CHAIRMAN said that during the current session, according to the usual practice, a number of contacts had been established with the permanent missions of countries whose reports were overdue; the Bureau had endeavoured, in particular, to establish contact with those countries whose reports had been overdue prior to the end of 1989. It was to be hoped that those efforts would lead to the early submission of the reports in question.

97. Mr. ANDO said that he had recently been informed by Bulgaria that its report would be submitted at the end of May 1992 for consideration at the earliest possible date.

ORGANIZATIONAL AND OTHER MATTERS (continued)

98. The CHAIRMAN said that if he heard no objection, he would take it that the Committee agreed to establish the following working groups for its July session: the Working Group on Communications, consisting of Mr. Ndiaye, Mr. Fodor, Mr. Mavrommatis, Mr. Sadi and Mr. Prado Vallejo; and the Working Group on Article 40, consisting of Mr. Aguilar, Mr. Ando, Mr. Dimitrijević and himself.

99. It was so decided.

100. The CHAIRMAN said that the Working Group on Communications would consider cases at the admissibility stage and would adopt decisions or make recommendations to the Committee, as the case might be. It would also prepare draft guidelines for the Special Rapporteur on Follow-up. The Working Group on Article 40 would prepare the list of issues, would consider the draft general comments on articles 18 and 25 and the issue raised by one country with regard to communications, and would make recommendations to the Committee in that regard.

101. At the Committee's session in the spring of 1991, Mr. Lallah had been appointed Special Rapporteur for New Communications for a term of one year. He had recently contacted Mr. Lallah, who had stated that he would be able to continue exercising those functions until the autumn of 1992, at which time the Committee would hold new elections. If he heard no objection, he would take it that the Committee decided to reappoint Mr. Lallah as Special Rapporteur for New Communications without specifying the duration of his term of office.

102. It was so decided.

103. The CHAIRMAN said that at a recent meeting, he had requested the members of the Committee to consider volunteering to provide liaison with other treaty bodies. Since he had already established contact with the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, he suggested that he should continue in that role; he would welcome suggestions with regard to the other treaty bodies.

104. Miss CHANET suggested that she could establish contact with the Committee against Torture.

105. Mr. DIMITRIJEVIĆ volunteered to ensure liaison with the Committee on the Elimination of Discrimination against Women.

106. Mr. PRADO VALLEJO volunteered to provide liaison with the Committee on Economic, Social and Cultural Rights.

107. Mr. SADI proposed to establish contact with the Committee on the Rights of the Child.

108. Mr. EL-SHAFEI volunteered to maintain contact with the Committee on the Elimination of Racial Discrimination.

109. The CHAIRMAN requested those members of the Committee who had volunteered to provide liaison to report to the Committee on matters discussed by the other treaty bodies which might have a bearing on the Committee's work.

110. Mr. ANDO said that he had been endeavouring to obtain a contribution from a Japanese private foundation in order to accelerate the publication of the Committee's yearbook. The foundation had now decided that it would accept an application from the Chairman; it was to be hoped that the Chairman could pursue that offer before the July session.

111. The CHAIRMAN said that he would take the necessary steps.

CLOSURE OF THE SESSION

112. The CHAIRMAN said that during its forty-fourth session, the Committee had improved its methods of work. For the first time, it had been able to make collective observations on the reports of States parties; he expressed appreciation to the Rapporteurs for their efforts in that regard. The Committee had adopted a general comment on article 10 and had finalized its comment on article 7. It had also dealt with a number of communications, had adopted eight views on nine cases and had taken two decisions on inadmissibility. The Working Group on Communications had adopted 13 decisions on admissibility and two decisions under rule 91 of the rules of procedure. The Committee had been unable to consider a number of draft recommendations because of lack of time. It was to be hoped that 18 draft recommendations from the Working Group could be dealt with at the next session; in that connection, he suggested that the members of the Committee should take the dossier containing those draft recommendations with them and should study them prior to July.

113. After an exchange of courtesies, he said that the Committee had concluded the work of its forty-fourth session.

The meeting rose at 1 p.m.